to the breakdown of this marriage. In answer to the respondent's allegation of adultery, the applicant had also filed an answer and cross-petition alleging adultery on the part of the respondent with a woman named. However, the applicant never proceeded on this allegation as she withdrew her answer and cross-petition on the date of the trial and consented to the defendant being granted a decree nisi on the sole ground of her adultery with the co-respondent who was also condemned to pay damages to the respondent. In view of this unqualified admission of adultery and from the pleadings that appears to be the only ground for the breakdown of the marriage and since the applicant had been the guilty party, I rule that she is not entitled to any maintenance whatsoever.

The respondent has undertaken to foot all expenses for the future education of the only child of the marriage and has also agreed to reimburse the applicant for all expenses incurred by her in maintaining the boy during the five months her son was with her after he left his father's home. Only the quantum of such expense is disputed to by the parties. The applicant has asked for $492 pm whilst the respondent maintains that $305 would be a more appropriate sum. Bearing in mind the needs of a growing 17-year-old, I consider that $350 pm will not be too high a sum as maintenance for a child of that age and for the period of five months that the applicant had to maintain him, the respondent will reimburse her $1,750 ($350 x 5).

Lastly, I come to the various items of jewellery which each party had alleged the other had removed and which neither party is prepared to hand over those which belonged to the other. Counsel for the applicant has suggested that to break the impasse, each party is to hand over jewellery belonging to the other. This may sound very justifiable but from the attitude of both parties, they are also disputing ownership of the jewellery that are in the other's possession. In the absence of any proof as to which item of jewellery belongs to which party and for all practical purposes, I resolved the matter by ordering that either party continues to retain whatever jewellery he or she has in his or her possession and to treat such jewellery as belonging to him or her. Lastly, I also ordered that each party shall bear the costs of this application.

Order accordingly.

Solicitors: *Shearn Delamore & Co; Zaitoon, CH Liew, & Mohd Ali.*

Reported by *Ng Sheau Jiuan*

Shanti Kant Jinghan v Owners or other persons interested in the vessel 'Indera Pertama' & Anor (No 2)

HIGH COURT (KUALA LUMPUR) – ADMIRALTY IN REM NO D1-41-5-88
ZAKARIA YATIM J
28 JANUARY 1988

Shipping – Admiralty in rem – Plaintiff claimed to be cargo owner – Damages for breach of contract and negligence – Warrant to arrest vessel – Shipowner set aside action and warrant of arrest – Cargo seller lodged caveat against release of vessel – Notice to show cause why caveat should not be lifted – Rules of High Court, O 70 r 13(1)

The plaintiff filed a writ of summons in rem against the owners of a vessel, 'Indera Pertama', for damages for breach of contract and for negligence. It claimed to be the owner of 1,332.71 cmb of Sabah round logs ('the cargo') shipped on the 'Indera Pertama' from Sandakan/Weston to Calcutta but the cargo did not arrive in Calcutta. The vessel with the cargo on board was at Pasir Gudang port. The plaintiff obtained an order of the court for the issue of a warrant to arrest the said vessel and the vessel was duly arrested.

On 3 November 1988, on the application of the shipowners, the courts ordered, inter alia, that the writ of summons in this action be set aside; and the order given on 26 May 1988 for the arrest of the vessel be set aside. After this order was made, the seller of the cargo, Malayan Produce Merchants Sdn Bhd, lodged a caveat on 4 November 1988 against the release of the vessel. On 3 November 1988 the senior assistant registrar issued a notice to the cargo seller's solicitors to show cause why the caveat lodged by them should not be lifted in view of the order of the court setting aside the warrant of arrest in respect of the vessel.

Held, not making an order to have the caveat lifted:

(1) Under O 70 r 13(1) of the Rules of the High Court 1980, a person may lodge a caveat if he 'desires to prevent the release of any property under arrest in an action in rem ...'. In other words he must lodge the caveat while the warrant of arrest was in force. In the instant case, since the warrant of arrest had been set aside on 3 November 1988, the vessel was no longer under arrest on 4 November and the question of preventing the release of the vessel on the date the caveat was lodged did not arise. Therefore the caveat lodged on 4 November 1988 is unenforceable and ineffective in law. From the wording of O 70 r 13(1) the caveat cannot apply retrospectively.

(2) In the circumstances, since the caveat was filed wrongly, in that it was filed when the vessel was no longer under arrest, the caveat has no legal effect whatsoever and the court need not make any order to have the caveat lifted. Each party to bear his own costs.

Case referred to

1 *Hong Lee* v *Golden Dragon Shipping (Singapore) Private Ltd* [1976] 2 Lloyd's Rep 462; [1976] 1 MLJ 159 (distd)

Legislation referred to

Rules of the High Court 1980 O 70 r 13(1)

A Fernandez for the caveator.
N Navaratnam for the shipowners.

Cur Adv Vult

Zakaria Yatim J: The plaintiff, who was carrying on business under the name of Gopsan (India), filed a writ of summons in rem on 27 April 1988 against the owners of a vessel, Indera Pertama, for damages for breach of contract and for negligence. Gopsan (India) claimed to be the owner of 1332.71 cmb of Sabah round logs, 'the cargo', shipped on the Indera Pertama from Sandakan/Weston to Calcutta but the cargo did not arrive in Calcutta. On the day the writ was filed the vessel with the cargo on board was at Pasir Gudang port. On 26 May 1988 Gopsan (India) obtained an order of the court for the issue of a warrant to arrest the said vessel. The vessel was duly arrested by the sheriff on 27 May 1988. On 3 November 1988, on the application of the shipowners, I ordered, inter alia, that the writ of summons in this action be set aside; and the order given on 26 May 1988 for the arrest of the vessel be set aside. See my written judgment dated 30 December 1988 [see [1989] 3 MLJ 58].

After this order was made, the firm of solicitors, Messrs Anthony Fernandez & Partners, acting on behalf of Malayan Produce Merchants Sdn Bhd, the seller of the cargo in this case, lodged a caveat on 4 November 1988 against the release of the vessel. On 3 November 1988 the senior assistant registrar issued a notice to Messrs Anthony Fernandez and Partners to show cause why the caveat lodged by them should not be lifted in view of the order of the court setting aside the warrant of arrest in respect of the vessel. It was in pursuance of this notice to show cause that both the caveator and the shipowners appeared before me on 14 December 1988.

Mr Fernandez, counsel for the caveator submitted that the proper procedure to be adopted was for the owners of the vessel to make the application to have the caveat lifted. Mr Navaratnam, counsel for the owners of the vessel, agreed with Mr Fernandez's submission with regard to the procedure to be adopted. In any case, both counsels proceeded with their arguments as to whether the caveat should be lifted or not. Mr Fernandez argued that the setting aside of the warrant of arrest on 3 November 1988 did not ipso facto lead to the lifting of the caveat against the release of the vessel. In support of his argument he relied on a Singapore decision, *Hong Lee* v *Golden Dragon Shipping (Singapore) Private Ltd*,[1] where the Court of Appeal held that the caveat remained in force after the warrant of arrest had been set aside. He also said that formal notice should be given to him before an application is made to lift the caveat.

Mr Navaratnam submitted that when the caveat was lodged on 4 November 1988, the warrant of arrest had already been set aside. Indeed, Mr Fernandez conceded that the caveat was lodged one day after the warrant of arrest was set aside. Order 70 r 13(1) states as follows:

> A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of Court of any money in Court representing the proceeds of sale of that property must file in the Registry a praecipe in Form 162, and the filing of praecipe a caveat against the issue of a release with respect to that property and the payment out of Court of that money shall be entered in the caveat book.

It is significant to note that under the above rule, a person may lodge a caveat if he 'desires to prevent the release of any property under arrest in an action in rem ...'. In other words he must lodge the caveat while the warrant of arrest was in force. In the instant case, since the warrant of arrest had been set aside on 3 March 1988, the vessel was no longer under arrest on 4 November and the question of preventing the release of the vessel on the date the caveat was lodged did not arise. Therefore the caveat lodged on 4 November 1988 is unenforceable and ineffective in law. From the wording of O 70 r 13(1) the caveat cannot apply retrospectively. In the *Hong Lee* case,[1] the caveat was lodged while the vessel, the 'Golden Elephant', was under arrest. That case therefore does not apply to the present case.

In the circumstances, since the caveat was filed wrongly, in that when the vessel was no longer under arrest, the caveat has no legal effect whatsoever and the court need not make any order to have the caveat lifted. Each party to bear his own costs.

Order accordingly.

Solicitors: *Anthony Fernandez & Partners*; *Shearn Delamore & Co.*

Reported by *Wong Kim Fatt*

Shanti Kant Jinghan v Owners or other persons interested in the vessel 'Indera Pertama' & Anor

HIGH COURT (KUALA LUMPUR) – ADMIRALTY IN REM NO D1-41-5-88
ZAKARIA YATIM J
30 DECEMBER 1988

Shipping – Admiralty in rem – Plaintiff claimed to be cargo owner – Action for breach of contract and negligence – Application to set aside writ and warrant of arrest of vessel – Whether plaintiff a consignee or endorsee or holder for value – Bill of lading – Endorsements in blank – Special endorsement – Property does not pass by mere endorsement – Bill of exchange lapse – Unpaid seller – Plaintiff had no title in cargo – No locus standi – Writ and warrant set aside

Sale of goods – Plaintiff claimed to be cargo owner – Whether plaintiff a consignee or endorsee or holder for value – Bill of lading – Made out to shipper's order – Sellers reserving right of disposal – Bill of lading not made out to plaintiff or to order – Shipper entitled to transfer bill of lading – Endorsements in blank – Special endorsement – Property does not pass by mere endorsement – Bill of exchange lapse – Unpaid seller – Plaintiff had no title in cargo – Sale of Goods (Malay States) Ordinance 1957

This is an application by the first defendant for, inter alia, an order that the writ of summons in this action be set aside;